

10/553496

Practitioner's Docket No. 870-003-197

## CHAPTER II

## Preliminary Classification:

Proposed Class:

Subclass:

NOTE: "All applicants are requested to include a preliminary classification on newly filed patent applications. The preliminary classification, preferably class and subclass designations, should be identified in the upper right-hand corner of the letter of transmittal accompanying the application papers, for example 'Proposed Class 2, subclass 129.'" M.P.E.P., § 601, 7th ed.

TRANSMITTAL LETTER  
TO THE UNITED STATES ELECTED OFFICE (EO/US)  
(ENTRY INTO U.S. NATIONAL PHASE UNDER CHAPTER II)

|                               |                           |                       |
|-------------------------------|---------------------------|-----------------------|
| PCT/EP2004/003916             | 14 APR. 2004              | 19 APR. 2003          |
| INTERNATIONAL APPLICATION NO. | INTERNATIONAL FILING DATE | PRIORITY DATE CLAIMED |
| FAN                           |                           |                       |
| TITLE OF INVENTION            |                           |                       |
| GEORG EIMER                   |                           |                       |
| APPLICANT(S)                  |                           |                       |

Mail Stop PCT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**EXPRESS MAILING UNDER 37 C.F.R. § 1.10\***

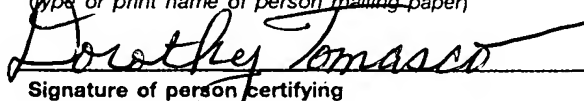
(Express Mail label number is mandatory.)

(Express Mail certification is optional.)

I hereby certify that this paper, along with any document referred to, is being deposited with the United States Postal Service on this date October 13, 2005, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 as "Express Mail Post Office to Addressee" Mailing Label No. EV562518332 US

DOROTHY TOMASCO

(Type or print name of person mailing paper)



Signature of person certifying

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

**\*WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

**NOTE:** To avoid abandonment of the application, the applicant shall furnish to the USPTO, not later than the expiration of 30 months from the priority date: (1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the USPTO; and (2) the basic national fee (see 37 C.F.R. § 1.492(a)). The 30-month time limit may not be extended. 37 C.F.R. § 1.495(a) and (b).

**WARNING:** Where the items are those which can be submitted to complete the entry of the international application into the national phase are subsequent to 30 months from the priority date the application is still considered to be in the international state and if mailing procedures are utilized to obtain a date the express mail procedure of 37 C.F.R. § 1.10 must be used (since international application papers are not covered by an ordinary certificate of mailing—See 37 C.F.R. § 1.8.

**NOTE:** Documents and fees must be clearly identified as a submission to enter the national state under 35 U.S.C. § 371 otherwise the submission will be considered as being made under 35 U.S.C. § 111. 37 C.F.R. § 1.494(g).

I, Applicant herewith submits to the United States Elected Office (EO/US) the following items under 35 U.S.C. § 371:

- a. ☒ This express request to immediately begin national examination procedures (35 U.S.C. § 371(f)).
- b. ☒ The U.S. Basic National Fee (35 U.S.C. § 371(a)) and other fees (37 C.F.R. § 1.492) as indicated below:

**WARNING:** This submission must also include items 3, and should also include items 4 and 10 shown below.  
35 U.S.C. 371 National stage: Commencement.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2), or under article 39 (1)(a) of the treaty.

(c) The applicant shall file in the Patent and Trademark Office —

(1) the national fee provided in section 41(a) of this title;

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants;

(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.

(d) The requirement with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty. The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Director and failure to do so shall be regarded as cancellation of the amendments made under article 34 (2)(b) of the treaty.

. . . . .

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with.

§ 1.495 Entering the national stage in the United States of America.

(a) *The applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. The thirty month time period set forth in paragraphs (b), (c), (d), (e) and (h) of this section may not be extended. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.*

(b) *To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:*

(1) *A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and*

(2) *The basic national fee (see § 1.492(a)).*

(c)(1) *If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of:*

(i) *A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2));*

(ii) *The oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1;*

(iii) *The search fee set forth in § 1.492(b);*

(iv) *The examination fee set forth in § 1.492(c); and*

(v) *Any application size fee required by § 1.492(j).*

(2) *A notice under paragraph (c)(1) of this section will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee required by § 1.492(j) in order to avoid abandonment of the application.*

(3) *The payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(h) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date.*

## 2. Fees

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                          |                     |                        |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|---------------------|------------------------|
| NATIONAL<br>STAGE<br>FEES***                  | <input type="checkbox"/> Basic filing fee** \$300 \$<br><input type="checkbox"/> Examination fee \$200 \$<br><input type="checkbox"/> Search fee \$1000 \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                          |                     |                        |
|                                               | (1) FOR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | (2) NUMBER<br>FILED                                                                      | (3) NUMBER<br>EXTRA | (4) RATE               |
|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                          |                     |                        |
| CLAIMS<br>FEE<br><br><input type="checkbox"/> | TOTAL<br>CLAIMS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 22-20=                                                                                   | 2                   | × \$ 50.00 = \$ 100.00 |
|                                               | INDEPENDENT<br>CLAIMS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2-3=                                                                                     | 0                   | × \$ 200.00 =          |
|                                               | MULTIPLE DEPENDENT CLAIM(S) (if applicable)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                          |                     | + \$360.00             |
|                                               | <input checked="" type="checkbox"/> Basic filing fee \$300.00<br><input checked="" type="checkbox"/> Examination fee<br><input type="checkbox"/> If international preliminary examination<br>report prepared by USPTO and all claims<br>satisfy provisions of PCT Article 33(1)-(4) \$100<br><input checked="" type="checkbox"/> All other situations \$200 200.00<br><input checked="" type="checkbox"/> Search fee<br><input type="checkbox"/> Search fee (37 C.F.R.<br>1.445(a)(2) has been paid<br>on the international application to the USPTO<br>as an International Searching Authority \$100<br><input checked="" type="checkbox"/> International Search Report prepared and<br>provided to the Office \$400 400.00<br><input type="checkbox"/> All other situations \$500<br><input type="checkbox"/> Additional fee for specification and drawings filed in paper<br>over 100 sheets (excluding sequence listing or computer<br>program listing filed in an electronic medium). The fee is<br>\$250 for each additional 50 sheets of paper or fraction<br>thereof |                                                                                          |                     |                        |
|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                          |                     |                        |
| ADDITIONAL<br>PAGES                           | Total Sheets<br>Extra Sheets<br>-100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Number of each additional 50 or<br>fraction thereof (rounded up to<br>a whole number/50) | Rate<br>\$250       |                        |
|                                               | Total of above Calculations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                          |                     | = \$1,000.00           |

|       |                                                                                                                                                             |             |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| SMALL | <input type="checkbox"/> Applicant hereby claims small entity status. 37 CFR 1.27. The above fees are reduced by 1/2.                                       | -           |
|       | Subtotal                                                                                                                                                    |             |
|       | Total National Fee                                                                                                                                          | \$ 1,000.00 |
|       | Fee for recording the enclosed assignment document \$40.00 (37 CFR 1.21(h)). (See Item 10 below). See attached "ASSIGNMENT COVER SHEET (37 C.F.R. § 3.34)". |             |
| TOTAL | Total Fees enclosed                                                                                                                                         | \$ 1,000.00 |

\*See attached Preliminary Amendment Reducing the Number of Claims.

**\*\*WARNING:** "To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date: \* \* \* (2) the basic national fee (see § 1.492(a))." 37 C.F.R. § 1.495(b).

**\*\*\*WARNING:** The USPTO is considering changing the amount of the search fee and examination fee charged in national stage in the near future. Please refer to [www.uspto.gov](http://www.uspto.gov) for the current fees.

\*See attached Preliminary Amendment Reducing the Number of Claims.

☒ Attached is a ☒ check ☐ money order in the amount of \$ 1,000.00-Chk. #29596

☒ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_

☒ to Deposit Account No. 23-0442

☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

**\*\*WARNING:** "To avoid abandonment of the application the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date: \* \* \* (2) the basic national fee (see § 1.492(a)). The 30-month time limit may not be extended." 37 C.F.R. § 1.495(b).

**WARNING:** If the translation of the international application and/or the oath or declaration have not been submitted by the applicant within thirty (30) months from the priority date, such requirements may be met within a time period set by the Office. 37 C.F.R. § 1.495(b)(2). The payment of the surcharge set forth in § 1.492(e) is required as a condition for accepting the oath or declaration later than thirty (30) months after the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than thirty (30) months after the priority date. Failure to comply with these requirements will result in abandonment of the application. The provisions of § 1.136 apply to the period which is set. Notice of Jan. 3, 1993, 1147 O.G. 29 to 40.

☐ **Assertion of Small Entity Status**

☐ **Applicant hereby asserts status as a small entity under 37 C.F.R. § 1.27.**

**NOTE:** 37 C.F.R. § 1.27(c) deals with the assertion of small entity status, whether by a written specific declaration thereof or by payment as a small entity of the basic filing fee or the fee for the entry into the national phase as states:

"(c) Assertion of small entity status. Any party (person, small business concern or nonprofit organization) should make a determination, pursuant to paragraph (f) of this section, of entitlement to be accorded small entity status based on the definitions set forth in paragraph (a) of this section, and must, in order to establish small entity status for the purpose of paying small entity fees, actually make an assertion of entitlement to small entity status, in the manner set forth in paragraphs (c)(1) or (c)(3) of this section, in the application or patent in which such small entity fees are to be paid.

(1) Assertion by writing. Small entity status may be established by a written assertion of entitlement to small entity status. A written assertion must:

- (i) Be clearly identifiable;
- (ii) Be signed (see paragraph (c)(2) of this section); and
- (iii) Convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent. While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

(2) Parties who can sign and file the written assertion. The written assertion can be signed by:

- (i) One of the parties identified in §§ 1.33(b) (e.g., an attorney or agent registered with the Office), §§ 3.73(b) of this chapter notwithstanding, who can also file the written assertion;
- (ii) At least one of the individuals identified as an inventor (even though a §§ 1.63 executed oath or declaration has not been submitted), notwithstanding §§ 1.33(b)(4), who can also file the written assertion pursuant to the exception under §§ 1.33(b) of this part; or
- (iii) An assignee of an undivided part interest, notwithstanding §§ 1.33(b)(3) and 3.73(b) of this chapter, but the partial assignee cannot file the assertion without resort to a party identified under §§ 1.33(b) of this part.

(3) Assertion by payment of the small entity basic filing or basic national fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), (f), (g), (h), or (k), or one of the small entity basic national fees set forth in §§ 1.492(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

(i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in §§ 1.16(e), or §§ 1.16(f).

(ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent."

3. ☒ A copy of the International application as filed (35 U.S.C. § 371(c)(2)):

NOTE: Section 1.495(b) requires that the basic national fee and a copy of the international application must be filed with the Office before the expiration of 30 months from the priority date to avoid abandonment. "The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time, the International Bureau notifies applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure the notice from the International Bureau has been received and then pay the basic national fee by 30 months from the priority date." Notice of Jan. 7, 1993, 1147 O.G. 29 to 40, at 35-36. See item 14c below.

- a. ☒ is transmitted herewith.
- b. ☐ is not required, as the application was filed with the United States Receiving Office.
- c. ☐ has been transmitted
  - i. ☐ by the International Bureau.

Date of mailing of the application (from form PCT/1B/308):

\_\_\_\_\_

- ii. ☐ by applicant on \_\_\_\_\_. (Date)

4. ☒ A translation of the International application into the English language  
(35 U.S.C. § 371(c)(2)):

- a. ☒ is transmitted herewith.  
b. ☐ is not required as the application was filed in English.  
c. ☐ was previously transmitted by applicant on \_\_\_\_\_. (Date)  
d. ☐ will follow.

NOTE: According to § 1.495(c)(1), if applicant complies with § 1.495(b) (i.e., supplies a copy of the international application and pays the basic national fee before expiration of thirty months from the priority date), the Office will notify the applicant if he or she has omitted a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2) and § 1.495(c)(1)(i)), setting a period of time within which applicant must provide any omitted translation. According to § 1.495(c)(3) a payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. A 'Sequence Listing' need not be translated if the 'Sequence Listing' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b); § 1.495(c)(4)."

5. ☒ Amendments to the claims of the International application under PCT Article 19  
(35 U.S.C. § 371(c)(3)):

NOTE: The Notice of January 7, 1993 points out that 37 C.F.R. § 1.495(d) requires that PCT Article 19 amendments must be submitted by 30 months from the priority date and this deadline may not be extended. The Notice further advises that: "The failure to do so will not result in loss of the subject matter of the PCT Article 19 amendments. Applicant may submit that subject matter in a preliminary amendment filed under section 1.121. In many cases, filing an amendment under section 1.121 is preferable since grammatical or idiomatic errors may be corrected." 1147 O.G. 29-40, at 36.

NOTE: 37 C.F.R. § 1.495(d): "A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of thirty months from the priority date will be considered to be canceled."

- a. ☐ are transmitted herewith.  
b. ☐ have been transmitted  
i. ☐ by the International Bureau.  
Date of mailing of the amendment (from form PCT/1B/308):  
\_\_\_\_\_  
ii. ☐ by applicant on \_\_\_\_\_. (Date)  
c. ☒ have not been transmitted as a **Prelim. Amend. is enclosed instead**  
i. ☐ applicant chose not to make amendments under PCT Article 19.  
Date of mailing of Search Report (from form PCT/ISA/210.):  
\_\_\_\_\_  
ii. ☐ the time limit for the submission of amendments has not yet expired. The amendments or a statement that amendments have not been made will be transmitted before the expiration of the time limit under PCT Rule 46.1.

6. ☒ A translation of the amendments to the claims under PCT Article 19  
(38 U.S.C. § 371(c)(3)):

- a. ☐ is transmitted herewith.  
b. ☐ is not required as the amendments were made in the English language.  
c. ☒ has not been transmitted for reasons indicated at point 5(c) above.

7. ☐ A copy of the international examination report (PCT/IPEA/409)

- ☐ is transmitted herewith.  
☐ is not required as the application was filed with the United States Receiving Office.

JC09 Rec'd PCT/PTO 13 OCT 2005

8. ☐ Annex(es) to the international preliminary examination report
- ☐ is/are transmitted herewith.
  - ☐ is/are not required as the application was filed with the United States Receiving Office.

9. ☐ A translation of the annexes to the international preliminary examination report

NOTE: 37 C.F.R. § 1.497(e) "A translation into English of any annexes to an international preliminary examination report (if applicable), if the annexes were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Translations of the annexes which are not received by the expiration of thirty months from the priority date may be submitted within any period set pursuant to paragraph (c) of this section accompanied by the processing fee set forth in § 1.492(f). Annexes for which translations are not timely received will be considered canceled."

- ☐ is transmitted herewith.
- ☐ is not required as the annexes are in the English language.

10. ☒ An oath or declaration of the inventor (35 U.S.C. § 371(c)(4)) complying with 35 U.S.C. § 115

- ☐ a declaration of inventorship in compliance with § 1.497 has been submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1 on \_\_\_\_\_.
- ☐ was previously submitted by applicant on \_\_\_\_\_. (Date)
- ☒ is submitted herewith, and such oath or declaration
  - ☐ is attached to the application.
  - ☒ identifies the application and any amendments under PCT Article 19 that were transmitted as stated in points 3(b) or 3(c) and 5(b); and states that they were reviewed by the inventor as required by 37 C.F.R. § 1.70.
- ☐ will follow.

NOTE: 37 C.F.R. § 1.495(c): "If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits . . . the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the . . . oath or declaration in order to prevent abandonment of the application. . . . The payment of the surcharge set forth in § 1.492(h) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date."

## II. Other document(s) or information included:

11. ☒ An International Search Report (PCT/ISA/210) or Declaration under PCT Article 17(2)(a):

WARNING: M.P.E.P., § 1893.03(g), 8th Edition: Information Disclosure Statement in a National Stage Application

"When an international application is filed under the Patent Cooperation Treaty (PCT), prior art documents may be cited by the examiner in the international search report and/or the international preliminary examination report. When a national stage application is filed under 35 U.S.C. 371, or a national application is filed under 35 U.S.C. 111 claiming benefit of the filing date of the international application, it is often desirable to have the examiner consider the documents cited in the international application when examining the national application."

*"As a result of an agreement among the European Patent Office (EPO), Japanese Patent Office (JPO), and the United States Patent and Trademark Office (USPTO), copies of documents cited in the international search report issued by any one of these International Searching Authority Offices generally are being sent to the other Offices when designated in the international application. Accordingly, in many national stage applications where the international search was conducted by the EPO, JPO, or USPTO, copies of the documents cited in the international search report are made available to the examiner in the national stage application.*

*"When all the requirements for a national stage application have been completed, applicant is notified (Form PCT/DO/EO/903) of the acceptance of the application under 35 U.S.C. 371, including an itemized list of the items received. The itemized list includes an indication of whether a copy of the international search report and copies of the references cited therein are present in the national stage file. The examiner will consider the documents cited in the international search report, without any further action by applicant under 37 CFR 1.97 and 1.98, when both the international search report and copies of the documents are indicated to be present in the national stage file. The examiner will note the consideration in the first Office action. There is no requirement that the examiners list the documents on a PTO-892 form. See form paragraphs 6.53, 6.54, and 6.55 (reproduced in MPEP § 609). Otherwise, applicant must follow the procedure set forth in 37 CFR 1.97 and 1.98 in order to ensure that the examiner considers the documents cited in the international search report.*

*"This practice applies only to documents cited in the international search report relative to a national stage application filed under 35 U.S.C. 371. It does not apply to documents cited in an international preliminary examination report that are not cited in the search report. It does not apply to applications filed under 35 U.S.C. 111(a) claiming the benefit of an international application filing date."*

- a. ☒ is transmitted herewith.
- b. ☐ has been transmitted by the International Bureau.  
Date of mailing (from form PCT/IB/308): \_\_\_\_\_
- c. ☐ is not required, as the application was searched by the United States International Searching Authority.
- d. ☐ will be transmitted promptly upon request.
- e. ☐ has been submitted by applicant on \_\_\_\_\_. (Date)

**12. ☒ An Information Disclosure Statement under 37 C.F.R. §§ 1.97 and 1.98:**

NOTE: 37 C.F.R. § 1.97

*"(b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:*

...

*(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application.*

- a. ☒ is transmitted herewith.

Also transmitted herewith is/are:

- ☒ Form PTO-1449 (PTO/SB/08A and 08B).
- ☒ Copies of citations listed.
- b. ☐ will be transmitted within THREE MONTHS of the date of submission of requirements under 35 U.S.C. § 371(c).
- c. ☐ was previously submitted by applicant on \_\_\_\_\_. (Date)

2009 Rec'd PCT/PTO 13 OCT 2009

13. ☐ An assignment document is transmitted herewith for recording.  
 A separate ☐ "COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION" or ☐ FORM PTO 1595 is also attached.

14. ☒ Additional documents:
- a. ☐ Copy of request (PCT/RO/101)
  - b. ☒ International Publication No. **WO 2004/094835 A1**
    - i. ☒ Specification, claims and drawing
    - ii. ☐ Front page only
  - c. ☒ Preliminary amendment (37 C.F.R. § 1.121)
  - d. ☒ Other

**Abstract**

15. ☒ The above checked items are being transmitted
- a. ☒ before 30 months from any claimed priority date.
  - b. ☐ after 30 months.
16. ☐ Certain requirements under 35 U.S.C. § 371 were previously submitted by the applicant on \_\_\_\_\_, namely:

### AUTHORIZATION TO CHARGE ADDITIONAL FEES

**WARNING:** Accurately count claims, especially multiple dependant claims, to avoid unexpected high charges if extra claims are authorized.

**NOTE:** "A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).

**NOTE:** "Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).

**NOTE:** The previous practice of holding applications abandoned if an authorization to charge fees under 37 C.F.R. § 1.16 has been provided instead of an authorization to charge fees under 37 C.F.R. § 1.492 has been changed. The Office amended 37 C.F.R. § 1.25(b), effective November 7, 2000, so that an authorization to charge fees under 37 C.F.R. § 1.16 in an international application entering the national stage under 35 U.S.C. § 371 is now accepted by the Office as an authorization to charge fees under 37 C.F.R. § 1.1492.

☒ Please charge, in the manner authorized above, the following additional fees that may be required by this paper and during the entire pendency of this application:

- ☒ basic fee
- ☒ search fee
- ☒ examination fee

**WARNING:** Because failure to pay the national fee within 30 months without extension (37 C.F.R. § 1.495(b)(2)) results in abandonment of the application, it would be best to always check the above box.

☐ 37 C.F.R. § 1.16(h), (i), (j) (presentation of extra claims)

**NOTE:** Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. § 1.492(d)), it might be best not to authorize the PTO to charge additional claim fees, except possible when dealing with amendments after final action.

- ☒ 37 C.F.R. § 1.17 (application processing fees)
- ☒ 37 C.F.R. § 1.17(a)(1)–(5) (extension fees pursuant to § 1.136(a))
- ☐ 37 C.F.R. § 1.16(s) (additional fee for specification and drawings filed in paper over 100 sheets)
- ☐ 37 C.F.R. § 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. § 1.311(b))

**NOTE:** Section 1.311(b) provides that an authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application **only after the mailing of the notice of allowance**. Accordingly, general authorizations to pay fees and specific authorizations to pay the issue fee that are filed prior to the mailing of a notice of allowance will generally not be treated as requesting payment of the issue fee and will not be given effect to act as a reply to the notice of allowance. Applicant, when paying the issue fee, should submit a new authorization to charge fees, such as by completing box 6b on the current PTOL-85B form. Where no reply to the notice of allowance is received, the application will stand abandoned notwithstanding the presence of general authorizations to pay fees or a specific authorization to pay the issue fee that were submitted prior to mailing of the notice of allowance. Where an attempt is made to pay the issue fee but an incorrect amount is submitted, § 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL-85(B)) is completed by applicant and submitted, § 1.311(b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed (i.e., submitted prior to the mailing of the notice of allowance) authorization to charge fees, and will be allowed to act as payment of the correct issue fee. § 1.311(b). See also the change to § 1.26(b). Notice of September 8, 2000, Fed. Reg. 54603-54683, at 54646 and 54647.

**NOTE:** 37 C.F.R. § 1.28(b) requires "Notification of any change in loss of entitlement to small entity status must be filed in the application . . . prior to paying, or at the time of paying . . . issue fee." From the wording of 37 C.F.R. § 1.28(b): (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.

- ☐ 37 C.F.R. § 1.492(e) and (f) (surcharge fees for filing the declaration and/or filing an English translation of an International Application later than 30 months after the priority date).

10/553496

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Reg. No.: 28,333

Tel. No.: ( 203 ) 261-1234

Customer No.: 004955

*Milton Oliver*

SIGNATURE OF PRACTITIONER

MILTON M. OLIVER

(type or print name of practitioner)

P.O. Address